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November 16, 1992

SPECIAL COUNSEL  
JEROLD L. JACOBS

Donna R. Searcy, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 87-268  
Advance Television Systems

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

On behalf of our client, Island Broadcasting Co., transmitted herewith for filing are an original and nine (9) copies of its "Comments of Island Broadcasting Co." on ATV allotment policy and methodology and channel assignment issues in the Second Further Notice of Proposed Rule Making in the above-referenced matter.

Please direct any communications or inquiries concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: Keith A. Larson, Chief  
Mary M. Fitzgerald, Esq.  
Gordon Godfrey  
R. Alan Stillwell  
Robert Eckert (All FCC - By Hand)(All w/enc.)

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NOV 16 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

TO: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

ISLAND BROADCASTING CO.

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Dated: November 16, 1992

## SUMMARY

ISLAND BROADCASTING CO. ("Island"), licensee of four Low Power Television Stations in the New York metropolitan area, comments herein on allotment policy and methodology and ATV channel assignment issues in the Second Further Notice of Proposed Rule Making in this proceeding, with emphasis on the following three points:

1) The Commission's third ATV allotment objective of making ATV allotments exclusively to the UHF band (Second Further Notice, ¶18) is unrealistic and flies in the face of the Commission's allotment policy (Id. at ¶40) of attempting to maintain existing vacant noncommercial NTSC allotments, providing new ATV channels for such allotments, and eliminating vacant noncommercial allotments "only where no feasible alternative exists for allotting ATV channels for eligible broadcasters". Moreover, as a general matter, a final ATV Table of Allotments with a strong VHF preference may meet the Commission's overall allotment goals much better;

2) Island fully supports the Commission's proposal (Second Further Notice, ¶35) to allot ATV channels on the basis of co-located transmitter sites, rather than community reference points; however, the Commission should not include channel pairings in the final ATV Table of Allotments; and

3) The Commission should establish restrictive guidelines for broadcaster selection of ATV channels from

the allotment blocks during the negotiation period which the Commission will allow before a final ATV Table of Allotments is adopted (Second Further Notice, ¶7).

In sum, Island urges that the Commission should prepare the final ATV Table of Allotments with a strong VHF preference; should establish a noncommercial reserve in the final Table; should make its ATV allotments in "blocks" to TV stations whose transmitters are approximately co-located; and should establish restrictive guidelines for broadcaster selection of ATV channels from the allotment blocks in each TV market. These guidelines should tend to prevent an "early user" of ATV from displacing a licensed LPTV/translator station while unused channels lie fallow for months or years - - and all at no cost to anyone.

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TO: The Commission

COMMENTS OF ISLAND BROADCASTING CO.

ISLAND BROADCASTING CO. ("Island"), licensee of Low Power Television ("LPTV") Stations W38AM, Long Island City, New York, W44AI, Plainview, Hicksville, and Mineola, New York, and W54AY, Brownsville, New York, by its attorneys, pursuant to §1.415 of the Commission's Rules, hereby submits Comments on allotment policy, allotment methodology, and ATV channel assignment issues in the Second Further Notice of Proposed Rule Making ("Second Further Notice"), 7 FCC Rcd 5376 (1992). In support whereof, the following is shown:

I. INTRODUCTION

1. Island and its Technical Director, Richard D. Bogner, filed Comments in response to the Second Report and Order/Further Notice of Proposed Rule Making ("Further Notice"), 7 FCC Rcd 3340 (1992), which focused on threshold ATV allotment/assignment issues. However, in the Memorandum Opinion and Order/Third Report and Order/Third Further Notice of Proposed Rule Making ("Third Report and Order"), FCC 92-438, released October 16, 1992, the Commission stated (at ¶32)

that it was deferring a decision on assignment methodology until it had studied comments on the Second Further Notice and had decided on an allotment methodology. Hence, consideration of Island's previous Comments was deferred.

2. In these new Comments, Island has reformulated its previous proposals on allotment and assignment policy and methodology in light of the Second Further Notice and will address the following points:

a) The Commission's third ATV allotment objective of making ATV allotments exclusively to the UHF band (Second Further Notice, ¶18) is unrealistic and flies in the face of the Commission's allotment policy (Id. at ¶40) of attempting to maintain existing vacant noncommercial NTSC allotments, providing new ATV channels for such allotments, and eliminating vacant noncommercial allotments "only where no feasible alternative exists for allotting ATV channels for eligible broadcasters";

b) Island fully supports the Commission's proposal (Second Further Notice, ¶35) to allot ATV channels on the basis of co-located transmitter sites, rather than community reference points; however, the Commission should not include channel pairings in the final ATV Table of Allotments; and

c) The Commission should establish restrictive guidelines for broadcaster selection of ATV channels from the allotment blocks during the negotiation period which the Commission will allow before a final ATV Table of Allotments is adopted (Second Further Notice, ¶7).

**II. AN ALL-UHF TABLE OF ALLOTMENTS IS UNREALISTIC AND IS INCOMPATIBLE WITH PRESERVING A REASONABLE NUMBER OF VACANT NONCOMMERCIAL ALLOTMENTS**

3. A careful analysis of the Second Further Notice's draft ATV Table of Allotments (which prefers UHF), compared to the alternative VHF-preference Table given by the Commission in its "Technical Supplement to Second Further Notice

of Proposed Rule Making: Results of Computer Run to Allot ATV Channels with Strong Preference For VHF" ("Technical Supplement"), supports the contention that a Table based on a UHF preference is flawed, and, in fact, a VHF-preference Table may meet the Commission's allotment goals much better. Further, as Island will now explain, it appears that there is in fact no valid reason to prefer UHF.

4. First, Paragraph 40 of the Second Further Notice requires the Commission to: (a) "maintain existing vacant noncommercial NTSC allotments"; (b) "provide new ATV channels for such allotments," and (c) "eliminate vacant noncommercial allotments only where no feasible alternative exists". Island has conducted a sample Study of the 14 states in the northeast quadrant of the United States plus the District of Columbia, using both the draft ATV Table (UHF preference) and the Technical Supplement (VHF preference), which shows that the Commission is fully capable of closely approaching all three of these objectives, but has chosen not to do so in its presently preferred solution! Of the 49 vacant noncommercial allotments in the study, the draft Table makes 38 (78%) unusable as NTSC channels (only one of these 38 was allocated an ATV channel in the draft Table), while the VHF-preference Table makes only 3 (6%) unusable. Furthermore, only 2 of the 49 are directly usable as ATV channels, using the draft Table, while 37 of the 49 are usable as ATV channels using the VHF-preference Table. Therefore, by using the VHF-preference Table, the Commission

can not only come close to reaching objectives (a) and (c), but it can also automatically approach objective (b) without the need to specifically attempt to find a new ATV channel for most locations which have current vacant noncommercial allotments.\* (Assuming that the study's data can be extrapolated to the approximately 350 vacant noncommercial channels in the lower 48 states, 264 channels remain usable as ATV channels using the VHF-preference Table, compared to only 14 using the sample Table.)

5. Second, Island's Study reveals the following additional facts, which favor use of the VHF-preference Table instead of the draft Table:

a) 3 of the 4 land mobile co-channel short spaces in the draft Table are eliminated in the VHF-preference Table;\*

b) 9 of the 11 land mobile adjacent channel short spaces in the draft Table are eliminated in the VHF-preference Table;\*

c) 3 of the 7 ATV to ATV co-channel short spaces in the draft Table are eliminated in the VHF-preference Table;\*

d) ATV to NTSC co-channel and adjacent channel short spaces were analyzed on a sample basis only, but it appears that there definitely will be fewer such short spaces using the VHF-preference Table, compared to the draft Table; and

e) Since most of the potentially displaced LPTV and television translator channels are urban and suburban UHF stations, fewer will be displaced using the VHF-preference Table.

6. Finally, Island notes the following additional facts which militate against the practicality or necessity of

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\* Specific channels and locations are available on request.



designing an all-UHF final ATV Table of Allotments or using a UHF-preference Table:

f) Since LPTV and translator stations never have to convert to ATV, over 3,000 currently-licensed VHF band stations will remain on the air indefinitely;

g) Since even the draft ATV Table requires some use of VHF, despite the Commission's third allotment objective, supra, ATV transmitters and receivers will have to be designed for both VHF and UHF in any event, as the Commission concedes in footnote 26 of the Second Further Notice;

h) Full service TV stations have indicated that they will press to re-convert to VHF for their ATV operation after full service NTSC ceases; and

i) Current indications are that UHF ATV stations will require considerably more transmitter power than VHF ATV stations, with resulting higher operational costs.

These realities further demonstrate that the VHF band may never be clear enough for use by other unspecified nationwide "new radiofrequency services" (Second Further Notice, ¶24). Moreover, as shown above, Island believes that the major effect of trying to achieve an all-UHF ATV service will be the essential destruction of the reserve of noncommercial TV channels in violation of the Commission's stated allotment policy in Paragraph 40 of the Second Further Notice (in addition to the other negative effects described in (b) through (e) above).

7. The Commission has stated repeatedly that vacant noncommercial allotments will be used for ATV only where "no feasible alternative exists for allotting ATV channels for eligible broadcasters" (e.g., Second Further Notice, ¶40). Island maintains that there is a clear feasible alternative

to the totally unnecessary elimination of a very large percentage of the noncommercial allocation reserve -- namely that the final ATV Table of Allotments should be prepared with a strong VHF preference, not a UHF preference, since a VHF preference comes very much closer to the proper goals of minimizing interference and loss of existing allotments and licenses as well as providing considerably better reception.

8. In addition, Island notes that minimal provision has been made in the draft Table for any noncommercial reserve. While this approach is consistent with the Commission's holding in Paragraph 34 of the Third Report and Order, supra, it further diminishes the likelihood that any channel will be available for a new noncommercial station at the "end" of the assignment process! Hence, Island urges that the Commission should re-think this allotment policy and should specifically make provisions for vacant noncommercial allotments in the final Table. As noted above, using a VHF-preference Table would make as many as 264 channels available for this purpose versus only 14 channels under the draft Table's UHF preference.

### **III. THE ATV TABLE OF ALLOTMENTS SHOULD ALLOT "BLOCKS" OF CHANNELS ON A TRANSMITTER CO-LOCATION BASIS**

9. In Paragraph 35 of the Second Further Notice, the Commission stated its intention to allot ATV channels on the basis of current transmitter sites, rather than community reference points. Island fully supports this proposal, which

will ensure that ATV allotments are made to groupings of TV stations whose transmitter sites are co-located or approximately co-located.

10. Island believes that using a co-location approach will eliminate the anomalies inherent in a "market" allotment methodology. The New York metropolitan area well illustrates the importance of using a "co-location" ATV allotment approach. According to the 1991-92 Arbitron ADI Market Atlas (1992 Broadcasting & Cable Market Place, p. E-66), the New York market (ADI #1) comprises 22 full power TV stations allotted to 14 separate communities in New York State, New Jersey, and Connecticut.<sup>1</sup> Island submits that while, on the one hand, it is clear that the 14 communities should not be treated as 14 separate markets for ATV allotment purposes, it is also clear that the 22 stations should not be lumped together as one "market".

11. Analyzing the 22 stations, Island notes that 12 of them have transmitter sites on either the World Trade Center or the Empire State Building, thereby satisfying Island's co-location or approximate co-location standard (the two buildings are less than three miles apart). In practical terms, treating these 12 stations as a unit would mean that the seven

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<sup>1</sup> The communities and numbers of allotments are as follows: New York City (7); Newark NJ (2); Linden NJ (1); Paterson NJ (1); Secaucus NJ (1); Bridgeport CT (2); Poughkeepsie NY (1); Kingston NY (1); Smithtown NY (1); Riverhead NY (1); Montclair NJ (1); Garden City NY (1); Newton NJ (1)[unbuilt construction permit]; and West Milford NJ (1) [unbuilt construction permit].

New York City stations, the two Newark stations, and the Linden, Paterson, and Secaucus, New Jersey stations (one each) will comprise the New York allotment grouping for ATV purposes.

12. Island urges that the remaining nine communities in ADI #1 are too distant from the market's core city of New York and from the approximately co-located New York transmitter sites to allow inclusion in a technically viable allotment group. Moreover, two of the putative station communities involve unbuilt construction permits. Island urges that maximizing allotment flexibility for the Commission and minimizing the ability of individual licensees to have a "lock" on specific ATV channels dictates that the Commission should allot ATV channels by co-located groupings, not on a "community of license" basis.

13. For similar reasons, Island maintains that in allotment groupings which have more than one TV station, the Commission's final Table of Allotments should allot channels as a block -- without NTSC/ATV pairings -- so that there are at least enough channels allotted for all of the NTSC stations in the group. Thus, in the New York grouping, a block of at least 12 ATV channels should be allotted for the 12 NTSC stations. In this way, the communities of Linden, Paterson, and Secaucus, each of which has only a single TV station, would not be allotted separate ATV channels in the Table of Allotments, but would be provided for as part of the New York

block of ATV frequencies. Then, as described in Section IV below, the 12 NTSC licensees would apply for specific ATV channel pairings on an as-needed demand basis in the construction permit application process.

**IV. THE COMMISSION SHOULD PRESCRIBE GUIDELINES  
FOR SELECTION OF ATV CHANNELS WITHIN MARKETS**

14. In Paragraph 35 of the Further Notice, the Commission sought comment on allowing broadcasters to "negotiate with each other and submit plans for pairing NTSC and ATV channels either nationwide or on a market-by-market basis". By referring to such negotiations, Paragraph 7 of the Second Further Notice implies that the Commission has tentatively concluded that they should be allowed. Island strongly opposes including such NTSC/ATV pairings in the final ATV Table of Allotments. Instead, Island urges that the final Table should contain only ATV allotment blocks of channels and that actual NTSC/ATV pairings should be made by the Commission only on an as-needed demand basis as part of the ATV channel application process. Under Island's recommended procedure, specific channel pairings would follow strict Commission assignment guidelines and would be subject to rejection, on the Commission's own motion or in response to petitions to deny under §73.3584 of the Rules, even if a proposed pairing resulted from station negotiations.

15. The purpose of Island's proposed NTSC/ATV pairing guidelines -- and the reason for its opposition to pairings

in the final ATV Table of Allotments -- is to diminish the ability of NTSC stations to intentionally or unintentionally, anticompetitively or innocently, select from an allotment block specific ATV channels which would prematurely or unnecessarily force off the air, displace, or psychologically disrupt licensed LPTV or television translator stations currently occupying the selected channels. By adopting a no-advance-pairings/immediate-need approach to specific ATV assignments, the Commission will prevent NTSC stations from "pocketing" ATV channels in an allotment block by private agreement among some or all of the NTSC stations in the allotment group and then delaying formal application to the Commission for the channel for months or even years, which, in turn, would postpone commencement of the three-year ATV construction "clock".

16. Island maintains that such a "negotiated" or inadvertent slow-down in ATV implementation would clearly defeat the Commission's purpose in setting a three-year limit for filing ATV applications (Third Report and Order, ¶16) and a three-year construction limit, and the Commission should not ratify such potentially anti-competitive or simply viewer-disruptive "warehousing" situations. Moreover, Island urges that rigorous Commission adherence to both three-year limits is needed to ensure that the selection of specific ATV channels on a demand basis is not distorted by the seeming

"unavailability" of ATV channels which have been chosen by NTSC stations but are not being actively applied for or built.

17. Instead of allowing pre-application pairings of NTSC and ATV channels, with the great risks of the above-described delayed ATV implementation and premature or unnecessary LPTV/translator negative impact, Island maintains that, as in the AM service, when an NTSC station files an FCC Form 301 application for its "new" ATV channel/station, it should specify its proposed pairing and demonstrate "good cause" for the selection of that ATV channel from the channels remaining unapplied for and unallotted in the market's allotment block. The essential pairing guideline which Island recommends is that an NTSC station should be precluded from specifying an ATV channel which will require the displacement of a licensed LPTV or translator station unless there is a compelling public interest justification for selecting that channel ahead of an unoccupied ATV channel in the market's allotment block.<sup>2</sup>

18. Island believes that compelling justifications for selecting an occupied LPTV or translator channel could include situations in which the distance to an NTSC full service co-channel allotment is significantly greater for that licensed LPTV/translator channel than for any other remaining unapplied for and unallotted ATV channel in the allotment block, or if

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<sup>2</sup> Where two or more applicants propose the same ATV channel, the one with the earliest file number should be given a "first-come-first served" preference if its "good cause" showing is persuasive; the remaining applicants would have to propose other channels.

the need for co-location of adjacent channels requires use of a licensed LPTV/translator channel next among the remaining ATV channels in the allotment block. On the other hand, Island submits that non-compelling or insufficient justifications to drive a licensed LPTV or translator station off the air earlier than necessary would include: a bare "wish" to use an ATV channel near the NTSC channel; ease of combining transmitting antennas; the (mistaken) belief that a lower UHF channel has superior propagation characteristics; and the transparent desire to eliminate a competitive LPTV or translator station.

19. Furthermore, Island urges that the Commission should specifically advise NTSC applicants that their applications will be subject to petitions to deny, and actual dismissal or denial, if they fail to satisfy the Commission's ATV channel selection guidelines.

20. Although Island previously suggested that minimizing LPTV/translator displacements should be a major goal of this proceeding, the Commission has held (Further Notice at ¶42) that: "[T]here is insufficient spectrum to...factor in LPTV displacement considerations in making ATV assignments". In Island's view, it is obvious that the ATV channel selection restraints it is now proposing do not cost any spectrum, nor do they impose any significant efforts or meaningful penalties upon NTSC stations. However, such restraints may add years of valuable community service to a licensed LPTV or translator



station, since there may be a long time spread among actual ATV on-air dates, especially when noncommercial ATV channel utilization is involved.

21. Therefore, Island respectfully urges that the Commission should impose Island's reasonable channel selection restraints. The Commission may continue to classify LPTV and translator services as "secondary" to full power NTSC stations, but this provides no justification for NTSC stations to prematurely or unnecessarily destroy LPTV/translator television service during the ATV channel selection/application process. Such activity clearly would be contrary to the paramount public interest.

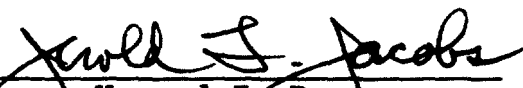
#### IV. CONCLUSION

WHEREFORE, Island respectfully requests that the Commission should prepare the final ATV Table of Allotments with a strong VHF preference; should establish a noncommercial reserve in the final Table; should make its ATV allotments in "blocks" to TV stations whose transmitters are approximately co-located; and should establish restrictive guidelines for broadcaster selection of ATV channels from the allotment blocks in each TV market. These guidelines should tend to prevent an "early user" of ATV from displacing a licensed

LPTV/translator station while unused channels lie fallow for months or years -- and all at no cost to anyone.

Respectfully submitted,

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